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Proteinhouse Franchising, LLC,
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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PROTEINHOUSE FRANCHISING, LLC,
LRAB, LLC, and ANDREW F. BICK,

Plaintiffs,

v.

KEN B. GUTMAN, STEVE HORCH,
and JOHN DOE,

Defendants.

Case No. 2:17-cv-02816-APG-PAL

**STIPULATION AND [PROPOSED]
ORDER REGARDING DEFENDANT
KEN B. GUTMAN'S TELEPHONE
RECORDS**

Plaintiffs Proteinhouse Franchising, LLC, LRAB, LLC, and Andrew F. Bick (together, "Plaintiffs") have served a subpoena *duces tecum* on Cellco Partnership d/b/a Verizon Wireless to obtain subscriber information and call detail records for Defendant Ken B. Gutman ("Gutman's") cellular telephone number. Gutman objects to Plaintiffs contacting certain persons whose telephone numbers will appear in the subpoenaed phone records. Accordingly, in an effort to balance Gutman's privacy concerns with Plaintiffs' need to obtain discovery of Gutman's telephone calls related to the claims and defenses at issue in this action, Plaintiffs, on the one hand, and Gutman, on the other hand, hereby agree and stipulate as follows:

1. The parties' counsel, having agreed and stipulated to the entry of a protective order governing the handling of confidential information in this action, shall submit their stipulation and proposed protective order to the Court for entry as an order of the Court.

2. Gutman shall not communicate any written objections to Verizon Wireless concerning its production of his cellular telephone records, and if Gutman has already made any

1 such communication to Verizon Wireless, he shall inform Verizon Wireless that his objections
2 are withdrawn and shall direct Verizon Wireless to produce the requested records to Plaintiffs'
3 counsel.

4 3. After receiving them, Plaintiffs' counsel shall provide a complete copy of all
5 subpoenaed records received to Gutman's counsel promptly upon receipt. All such records shall
6 be designated ATTORNEYS' EYES ONLY, pursuant to the parties' stipulated protective order,
7 from the date received by Plaintiffs' counsel until fourteen (14) days after such date (the "Review
8 Period"). During the Review Period, Gutman shall review the records in their entirety and shall
9 prepare, in good faith, a written log that: (a) identifies each person Gutman does not want
10 Plaintiffs to contact by name and telephone number; (b) identifies each such person's
11 relationship to Gutman; (c) sets forth all reasons why each such person should not be contacted
12 by Plaintiffs; and (d) certifies under oath, for each such person, that she or he does not possess
13 discoverable information relevant to the parties' claims or defenses. During the Review Period,
14 Plaintiffs' counsel shall not call any of the numbers and/or persons listed in the records and shall
15 not disclose the records or any information contained therein to any person not entitled to the
16 disclosure of materials designated ATTORNEYS' EYES ONLY, as set forth in the parties'
17 stipulated protective order.

18 4. At or before the end of the Review Period, Gutman's counsel shall serve a copy
19 of the log on Plaintiffs' counsel. Upon receipt of the log, the designated confidentiality level of
20 the telephone records shall be automatically downgraded from ATTORNEYS' EYES ONLY to
21 CONFIDENTIAL without any further action on the parties' part, and neither Plaintiffs nor their
22 counsel shall contact any person listed on the log without Gutman's prior written consent or an
23 order of the Court specifically authorizing such contact, as provided for herein. Plaintiffs or
24 their counsel may contact all such persons not listed on the log whose telephone numbers appear
25 in the subpoenaed telephone records.

26 5. Upon receipt of the log, and at all times thereafter, if Plaintiffs or their counsel
27 reasonably believe that any telephone number listed in the log corresponds to a person who
28 possesses information relevant to the parties' claims or defenses, Plaintiffs, through counsel,

may in writing seek Gutman's written consent to call an such number and/or person. Within ten (10) days after receiving such written request, the parties' respective counsel shall meet and confer to determine whether Gutman will consent to the request. If Gutman consents to the request, his consent shall be communicated to Plaintiffs' counsel in a written document signed by Gutman or his counsel. If the parties are unable to reach an agreement after meeting and conferring, Plaintiffs shall be entitled to file a motion with the Court seeking leave to call the numbers and/or persons identified in the request. If the Court grants the motion, the Court shall award Plaintiffs their reasonable expenses, including attorneys' fees and costs incurred in connection with the motion.

6. Plaintiffs have also served Gutman with a request for production of documents seeking Gutman's cellular telephone bills. The provisions of this order shall apply to those records as well with the Review Period beginning to run on the date any such records are first produced by Gutman.

IT IS SO AGREED AND STIPULATED:

HOWARD & HOWARD ATTORNEYS PLLC BLUT LAW GROUP, P.C.

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IT IS SO ORDERED:


UNITED STATES MAGISTRATE JUDGE

DATED: May 22, 2018